

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	No. 20-0309
In the Matter of Moratorium on Disconnection	)	
of Utility Services during the Public Health	)	
Emergency Declared on March 9, 2020 pursuant	)	
to Sections 4 and 7 of the Illinois Emergency	)	
Management Agency	)	

MT. CARMEL PUBLIC UTILITY CO.'S REPLY TO RESPONSES OF  
ILLINOIS COMMERCE COMMISSION STAFF, ILLINOIS ATTORNEY  
GENERAL'S OFFICE, CITIZENS UTILITY BOARD, AND COFI

NOW COMES Mt. Carmel Public Utility Co. ("MCPU") by and through its undersigned counsel, and pursuant to the filing schedule established by the Administrative Law Judge in this docket, hereby files its Reply to the Responses of the Illinois Commerce Commission Staff ("Staff"), Illinois Attorney General's Office ("AGO"), the Citizens Utility Board ("CUB") and the Community Organizing and Family Issues ("COFI"), and states as follows:

I. Illinois Commerce Commission's Emergency Interim Order

The Illinois Commerce Commission ("Commission") entered an Emergency Interim Order on March 18, 2020. In that order, the Commission found and ordered that due to the state of public health emergency resulting from the COVID-19 pandemic, that the electric distribution, natural gas, water and sewer utilities in the State of Illinois were to do the following:

- A. "cease disconnections for non-payment, and to suspend the imposition of late payment fees or penalties, on an interim basis, and until May 1, 2020 or until the Governor announces the end of the COVID-19 state of public health emergency, if the state of emergency continues past May 1, 2020."

- B. “each Illinois gas, electric distribution, water and sewer utility shall design and implement on a temporary basis more flexible credit and collections procedures and file them for the Commission consideration and approval to ensure that customers remain connected to essential utility services when the emergency status ends”
- C. “each Illinois gas, electric distribution, water and sewer utility is directed to file a response to this order, identifying: (a) whether it will voluntarily cease disconnections for non-payment, and suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency; and (b) the proposed flexible credit and collections procedures, as described above; or (c) show cause why it is unable to issue said moratorium and revised credit and collections procedures.”
- D. “utilities shall keep track of all expenses resulting from this order and any other measures taken in response to the COVID-19 to enable a meaningful future Commission review of the reasonableness and prudence of such expenses”
- E. “this matter shall be set for hearing before an Administrative Law Judge by [date], to determine whether any Illinois gas, electric distribution, water, and sewer utility is unwilling or unable to voluntarily cease disconnections for non-payment, or suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020, or until the Governor announces the end of the COVID-19 state of emergency, if the state of emergency continues past May 1, 2020”

The Emergency Interim Order is limited in scope to the foregoing ordering paragraphs. Intervenor to this docket in their Responses to Utility Responses are attempting to broaden the scope of the docket into a rulemaking. Attempts are being made to sway the Commission into modifying 83 Adm. Code Part 280. The current Part 280 was developed over a multi-year process which included workshops, drafts and re-drafts and evidentiary matters in a rulemaking docket. The Intervenor is now attempting to undo that process and take advantage of the pandemic crisis without proper presentation and determination of facts and evidence. Mere speculation and conjecture does not suffice to form a basis for many of their positions.

## II. General Reply

MCPU would also note that it, as other utilities throughout the country; most business throughout the country; and Illinois state agencies (including the offices of the Commission) have implemented COVID-19 safety plans to minimize its workforce from the health risk. (OSHA requires the provision of a safe work place.) A large part of this plan is to allow administrative personnel to telework from home. This reduces the number of personnel on site and allows personnel to reduce possible exposure to the coronavirus and to take care of their children that are not able to go to school or to daycare providers. Therefore, many of the suggestions of both Staff and the Intervenor, if even appropriate topics for this proceeding, would be difficult to administer by utility workforces that may not have full access and capabilities through teleworking. Most teleworking that has been established has come with data security provisions that limit access to data. Further, many of the data reporting suggestions are labor intensive and most likely would not be able to be done absent personnel reporting to their offices and thereby increasing the likelihood of exposure and spread of COVID-19 if any personnel were to become infected. Again, the primary focus for all parties is that this is a health emergency first, and then relief for those in need of utility service second. At this time it is not known that even if the Governor does not extend the health emergency beyond May 1, 2020, general health practices may still require personnel to telework for a much longer time period.

Also, in general response to the Intervenor, they make many good points about businesses being shut down, customers potentially having difficulty to pay and the downturn in the economy. With that said, the Commission should be cognizant of the fact that all of this also has negative impacts on the utilities due to less revenues to the utilities, an increase in arrearages, and most likely, a rise in uncollectable accounts. The financial impact on the utilities should also

be kept in mind as each company currently has different financial and cost structures and different credit and collection practices. Therefore, each utility should be allowed to have its own plan to ensure all parties' needs are addressed. This cannot be accomplished with a uniform plan as the Intervenor's suggest.

MCPU's credit and collections plan states that it will do the following to assist its customers for a minimum of 6 months after the end of the emergency period in addition to other normal assistance:

- a. Extend the Winter Deferred Payment Arrangement (Winter DPA) terms beyond March 31, 2020, for a period of not less than four months, but not to extend beyond the following November, along with the option to enter into a budget payment plan. Any down payment would not exceed 10 percent of the amount past due and owing at the time of the agreement. 83 Ill. Adm. Code 280.135(a)(1)(A)
- b. Extend the Winter Deposit Rules to not require a down payment for a deposit in excess of 20 percent of the total deposit requested. An additional four months shall be allowed to pay the remainder of the deposit.
- c. Waiver of Re-connection fees.
- d. MCPU already does not charge a DPA reinstatement fee.
- e. MCPU does not currently obtain slow payment deposits.
- f. MCPU will waive any Non-Sufficient Fund (NSF) fees.

### III. Reply to Staff's Response

Staff timely filed its Response to the Utility Plans which were filed pursuant to the Commission's Emergency Interim Order of March 18, 2020. Staff stated on page 10 of its Response, that: "Mt. Carmel states that on the date of entry of the Emergency Interim Order, it ceased disconnections of customers for non-payment and suspended imposition of late payment

fees....” As a minor correction to Staff’s Response, MCPU actually stated in its Response filed on March 27, 2020: “That on March 16, 2020, the next business day after the Notice was received, MCPU implemented a policy to cease disconnects of utility services for nonpayment and to suspend sending disconnection notices to its customers and as well as suspending the imposition of late fees or penalties.” (The referenced “Notice” was the one given by the Commission’s Acting Executive Director near the end of the business day on Friday, March 13, 2020, requesting the utilities to cease disconnections and to suspend collection of late fees or penalties.)

Staff in its Response to MCPU’s Response to the Emergency Interim Order, stated that MCPU’s plan “appears to the Staff to comply with the Emergency Interim Order.” MCPU requests the Commission follow Staff’s finding and rule that MCPU’s plan complies with the Emergency Interim Order. MCPU has close contacts with its customers and allowing flexibility to adapt to its customer needs will assist in the fiscal prudence for both MCPU and its customers. Allowing MCPU and the other utilities, especially small utilities this flexibility, will allow the individualized plans to be effective and moderated as needed.

Staff in its Response to the Utilities’ Responses recommend that the Commission order the utilities gather data and submit a report on a semimonthly basis to help Staff, and presumably the Commission, to determine if each utilities’ plan for credit and collection relief is working. (pages 13-15) MCPU objects to this increased administrative burden and would assert that it goes beyond the scope of the Emergency Interim Order. The proposal is burdensome in the amount of detail requested. Further, the frequency of reporting is not feasible as some of the numbers do not generate from the systems until end of month financials are run. If reported semimonthly, additional manual development of the information would be required.

However, if the Commission is to go outside the scope of the Emergency Interim Order and require such reporting, it should be no more than monthly. Semimonthly is too frequent when the increased labor involved is evaluated. Moreover, many of the data points requested can be dependent on weather, such as heat/cooling loads, and other uncontrollable issues which may not give a true assessment of the plans and the impact of COVID-19 on the customer.

If data is required to be reported, then items 4, 5, 6 & 7 of Staff's proposal are too labor intensive to collect and monitor. The other items 1-3 and 8-15 can be obtained, but still will require administrative labor to collect and report and should be reported no more often than monthly.

Staff further suggests that the utilities provide responsive information in this Reply which would provide sufficient explanation to allow the Commission to properly address the topics of cost-recovery of complying with the Emergency Interim Order and the credit and collections plans along with the costs of COVID-19 response. Staff further suggests that this Reply give detailed explanation of the planned ratemaking treatment for costs incurred or late payment fees suspended as a result of dealing with the health emergency. MCPU takes issue with this suggestion at this time for the following reasons: (1) Insufficient time has been given to MCPU to evaluate how to respond to Staff's suggestion. Essentially, there are only 4 days to determine an explanation of ratemaking treatment for costs, many of which have not yet occurred and the determination of the types of costs that may be incurred is still unknown; (2) MCPU, as presumptively most companies are doing, has most of its administrative staff working from home without all the documents, information and other capabilities to determine how these costs would be treated; (3) there is no rush to determine these cost recovery methods by May 1, 2020. The Emergency Interim Order specifically states that "utilities shall keep track of all expenses

resulting from this order and any other measures taken in response to the COVID-19 to enable a meaningful **future** Commission review of the reasonableness and prudence of such expenses.”

(underlining and bold text added for emphasis)

#### IV. Reply to Attorney General’s Office

The AGO goes well beyond the scope of this docket as established in the Emergency Interim Order. No uniform plan for credit and collections should be ordered. The AGO’s Response to the Utilities’ Responses seeks a re-write of Part 280, albeit a temporary one, that could be in effect for longer than two years. This is evidenced by the AGO’s suggestion of extending the DPA time period for low income customers two years from the end of the emergency period (which is an unknown date currently). The AGO’s suggestion would put a financial burden on the utilities, create more administrative burdens, and simply create a bigger debt for customers to try and dig out of.

More specifically, the AGO’s Response is incorrect when it presumes all utilities currently use the same credit and collection procedures. For example, MCPU does not perform credit checks on applicants nor does it do credit scoring. Moreover, MCPU does not refer accounts to a collection agency or credit bureau. The facts are that each utility uses Part 280 in ways that are in conformance, but which allow flexibility in the needs of their customers and of the utility. Needs of all parties are different in various parts of the state. Chicago is different than Peoria, which is different than Mt. Vernon, which is different than Metropolis, and so forth. The AGO clearly shows in its Response the differences in regions by citing average weekly wages in different counties of the state. (page 8)

The AGO also feels that different credit and collections plans could be confusing to the customer. The utilities have historically and will work with their respective customers who are

in need and will attempt to inform and educate them of the options that the customer has.

According to the AGO's position, if there was a uniform plan, then there would be no confusion.

If that were true, then there would be no need for the utilities to educate and assist customers as the AGO clearly desires. One argument of the AGO does not support the other.

The AGO cites 83 Ill. Adm. Code 280.5 emphasizing Part 280 contains "minimum" standards. Utilities do in fact go beyond the "minimum" standards of Part 280 in actual application. However, the AGO in much of its proposals omits the part of 280.5 which states that the code is to "take into account the duty of the utility, customer, applicant and occupant to demonstrate good faith and fair dealing." When the AGO proposes self-certification for low income, the AGO does not recognize that there are many disconnects for non-payment and applicants who have outstanding balances or arrearages that are not customers that "can't pay," but are those that "won't pay." This was a topic hotly debated in the rulemaking for the current Part 280 "minimum" standards. This is not to take the issue of low income or financial crisis lightly, especially in this time of a health emergency, but it is a reality that some customers try to game the system and avoid payment when they are more than able to make payment.

The Intervenors indicate that State of Illinois agencies are taking LIHEAP applications, just not in person. Therefore, it is not impossible to obtain certification to show qualification as low income. The position that a customer or applicant has simply applied for a benefit is without merit. Anyone who is still employed, has an income, has reasonable assets, can apply for benefits and then self-certify they have "applied" for a benefit, even though they have no chance of receiving the governmental or other assistance. Again, Part 280 was developed to help ensure that the customer, applicant and occupant demonstrate good faith and fair dealing, not just the utilities.



Further, the fact that the state has borrowed \$100 million from the LIHEAP funds should be reviewed by the AGO. What is being done to make those taking funds intended for those in need held accountable?

The AGO would suggest that after the emergency period ends, that customers be given a grace period of 60 days without further disconnects and late fees and penalties, effectively extending the moratorium. This should be denied. Customers who would financially need this should be afforded the opportunity to discuss their situation with the utility. An automatic extension does not help the customer get on track to paying its arrearage, but instead gets them further behind. The sooner that discussions are held and a payment plan is arranged, the more likely it will be that the customer won't be put into a position of increasing a debt that they will never be able to pay. The end result of extending without payments is that the customer will ultimately be disconnected for an overwhelming debt created by these proposals. What then happens is the customer will send someone else to put the service back on in another person's name and the debt goes unpaid. This then ultimately being debt that the rest of the rate payers shoulder in the next rate case. We cannot be short sighted in the actions taken, but we need to look at the full picture.

Moreover, the time periods which the AGO proposes for customers to pay back debt are too long for the utilities to be forced to shoulder or carry this debt. Customers would also drag out the payments to recover with new usage and new bills being added, thereby again creating the spiral of debt that the customer cannot get out of. Further, the suggestion is for all customers, not just low income. Anyone who could get an interest free loan,( including the rich customer or large corporation, which is what the AGO appears to be advocating), would be silly not to take it. Utilities are not in the business of extending loans to its customers (especially

those not in financial hardship, with presumably no interest or down payment or deposit being required).

MCPU has proposed extending the winter month DPA rules during the six month post emergency period. Nothing more should be required of it or the other utilities for DPAs. The winter rules allow for a reduction by half of the down payment on DPAs. This is sufficient. Further, 83 Ill. Adm. Code 280.120(b)(2)(C) already provides as follows: “At the utility’s discretion, a residential customer owing a past due amount for service, but who is not automatically eligible for a DPA under subsection (b)(1), may enter into a DPA to retire the debt.”

V. Reply to CUB

CUB, as well as the AGO, puts forth issues in its Response to the Utilities’ Responses that go beyond the scope of the Emergency Interim Order. No uniform plan for credit and collections should be ordered.

CUB states at page 4 of its Response, that “the Emergency Order anticipates a second interim order in this proceeding, at the expiration of the current directive.” CUB makes this statement to argue for a uniform plan. The actual language of the Emergency Interim Order on page 7 states: “that each Illinois gas, electric distribution, water and sewer utility shall design and implement on a temporary basis more flexible credit and collection procedures and file them for Commission consideration and approval....” It is important to note that each utility was to file a plan, not that the utilities were to collectively file a joint or uniform plan. Further, the reference by CUB to a second interim order is confusing. CUB’s reference to a “second interim order” can presumably only mean an order from the Commission approving each utilities’ plan. The language of the Emergency Interim Order does require a hearing if a utility is unwilling or

unable to comply with the order regarding disconnects and late fees, and arguably an order could come from that. Additionally, the Emergency Interim Order on page 7 contemplates further review, presumably an order would be issued, for the topic of cost recovery, which is a premature topic at this stage of the docket. But, there is no indication there will be a “second interim order” as CUB suggests.

On page 7 of CUB’s Response, they also state as follows: “The Emergency Order’s own initial directives adopt the proper approach – a uniform, minimum slate of accommodations....” This statement is very misleading. The only place in the Emergency Interim Order where the word “uniform” appears is on page 3 thereof, when the order recites 220 ILCS 8-505. The use of the term “uniform” in said statute states the Commission has the power “to establish uniform or other standards of equipment....” Clearly no standards of equipment are being addressed in this docket so CUB’s argument is a far reach for a uniform plan. CUB, who was a party to the Part 280 proceedings when it was written, is again trying to re-litigate that proceeding by adding items that were either rejected or not included in the Part 280 re-write.

CUB posits that utilities should notify all households at risk of disconnection after the emergency period of the credit and collection plans of the utility for at least 6 months after the expiration of the emergency period. The utilities are already required under Part 280 to give notice of disconnection. Said notice is found in Part 280. Appendix A. The disconnect notice sets forth required language to ensure giving notice of customer’s rights and how to find out more information from the disconnecting utility by calling and inquiring of options, including DPAs. Nothing further needs to be addressed in any order on that topic.

CUB states that customers will become anxious if they don’t know what accommodations utilities are to provide. The emergency period still has a few weeks left, and may very well be

extended beyond that, which gives the utilities ample time to continue to educate and inform the customers of the accommodations their utility will make for them. For example, MCPU released for public viewing on local news sites it was enacting the current moratorium. This was released prior to the Emergency Interim Order being entered and released. Other utilities have and will also continue to educate which will relieve the supposed anxiousness of customers by knowing what is available to them. Once the plans are approved, the utilities can then increase their educational opportunities.

CUB, at page 7, advocates a uniform approach. However in footnote 7, CUB states its “does not object to small adjustments in how to achieve these objectives, for an individual utility that can show a particular need for its proposed modifications.” The individual utilities have already proposed modifications to Part 280 and therefore CUB’s conflicting argument should make its uniformity proposal moot. MCPU does not use collection or credit reporting agencies as some utilities do or rely on credit scoring. This again shows how various utilities have different models to work under. MCPU has the luxury of knowing its customers on a first name basis, as do some other small utilities in this docket, and are therefore able to do things that another utility may not be able to do. Again, not all utilities should have a uniform plan. CUB’s position is to get a uniform plan, then create more work for the Staff and the Commission by the utilities filing for modifications. This is not a reasonable solution especially in light of the short time requirements necessitated by the pandemic and the limited abilities of the Commission to hold evidentiary hearings in this pandemic.

MCPU would also reincorporate its comments on self-certification in this Reply to CUB as are set forth in the Reply to the AGO above. In addition, obtaining a permitted letter from a medical provider or social worker does not have the travel barrier that CUB’s Response implies.

The medical provider and / or social worker can simply email or fax to the utility the necessary documentation, as can other entities. The customer does not have to go to the doctor to physically get the form. The medical doctor's records would show the existing need. A customer or applicant simply stating "I am sick" is not a prudent business practice in any circumstance. It is noteworthy that it is argued that nothing can be done by third parties to assist the customer or applicant because of people working from home, but the Intervenor wants the utilities to continue business as usual with the addition of multiple tasks and workload on its personnel when many of them are also working from home.

MCPU would also restate its Reply to the AGO regarding DPAs to be incorporated as a Reply to CUB. Again, CUB wants all customers to have DPA's regardless of need for a period of 24 months. Those in need will only get farther behind and those that don't have a need, will utilize the free borrowed money. CUB states that the Commission should encourage attention to individual customer needs and they can agree to deferred payment periods shorter than the 2 years. So much for uniformity and treating everyone alike. 83 Ill. Adm. Code 280.120(b)(2)(C) already provides as follows: "At the utility's discretion, a residential customer owing a past due amount for service, but who is not automatically eligible for a DPA under subsection (b)(1), may enter into a DPA to retire the debt." The flexible and discretionary standards already in Part 280 allow the utilities and the customers to work together to meet needs of the individual customer.

MCPU again would state that collection and reporting of data is outside the scope of this docket. If, however, the Commission decides to require submission of data, it should not be made public on the Commission's website or any other forum as it should be considered privileged and confidential and not subject for public dissemination.

## VI. Reply to COFI

MCPU would incorporate its statements set forth above in response to the AGO and CUB as if set forth in this Reply to COFI section as are applicable. COFI starts out in its Response that uniformity is needed, then immediately states no two customers' circumstances are alike. It is presumed then that the two differing customers should be treated differently based on their circumstances. That is what is done now under Part 280 and is being expanded by the various utilities' plans. Uniformity is not needed, especially when COFI arguably says it should be applied differently. Not only are customers' circumstance different, so are utilities'.

At page 11, COFI discusses a survey of 100 low-income member families without laying any foundation to the validity or statistical value or that the person or persons who developed the survey have any expertise. The survey should not be given any weight as it is merely anecdotal discussion. Further, it is of no relevance other than to re-state that people have worries in life about finances, shelter, food, and health. These are things that everyone, regardless of income worry about and have to deal with. There is no basis for administrative notice of this supposed survey.

COFI argues that anyone disconnected for non-payment prior to the Emergency Interim Order should be reconnected. They also argue that because one or some utilities have decided to do so, is "precedent." Black's Law Dictionary defines precedent as: "An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law." Clearly no precedent has been made. Further, COFI states that all customers who were previously disconnected due to inability to pay should be reconnected. (page 14) It is impossible for the utilities to determine why someone was disconnected for non-payment, whether it be for inability, because they moved, or

put the service in someone else's name, or determined they did not want service any longer. Further, how far back would COFI have these reconnects occur? Since the middle of February, 2020? December of 2019? 1980?

Again, MCPU would restate its position on the DPAs made by the AGO and CUB for durations, deposits and other related items. COFI states that DPA's have high default rates. There is nothing in the record to show that this would change with longer DPA durations for all customers. In fact, it would lead to higher debts for the customer and higher uncollectable accounts for the utilities.

Again, self-certification of low-income is not advisable for the reasons previously stated herein. COFI also argues that LIHEAP money may not be available due to the state borrowing from the LIHEAP fund. COFI needs to address this issue with the state and seek repayment of the funds to LIHEAP in order to help the utility customers who are in need due to this pandemic.

COFI misstates the language in the Emergency Interim Order whereby COFI on page 31 of its Response states as follows: "The Commission's Emergency Order implies, if not stipulates, that the Commission's review of the submitted C&C plans will be ongoing," basing this argument from page 4 of the order that C&C procedures "be in place for no less than 6 months." This language from the order is clear, "no less than 6 months." Five months is not sufficient, nor is 3 weeks. All of the utility plans were for at least 6 months, thereby in compliance with the order. COFI is simply trying to create another round of review to try and get more each time they come back to the Commission. The plain language should be adhered to as it is not subject to interpretation as it is clear and concise.

COFI also goes beyond the scope of the Emergency Interim Order on page 32 by proposing a data protocol for utility reporting. The protocols should not be used, but if the

Commission addresses data reporting, they should not include dollar amounts billed, dollar value of late fees collected, dollar value of arrearages by vintage, average duration of disconnection, and dollar value of security deposits collected. The dollar amounts should be held confidential and not for public use and they and the other items become too burdensome from a labor intensive aspect. If data reporting is order, it should be in accordance with Staff's proposal as modified by the comments of MCPU in its Reply to Staff section.

VII. Reply to Allen Cherry

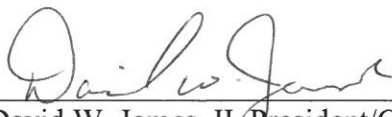
MCPU would reincorporate its replies to the AGO, to CUB and to COFI as they are applicable to the Comment of Allen Cherry.

VIII. Conclusion

The Commission should adopt the findings of Staff that the utilities that filed credit and collection practice plans are in conformity with the Emergency Interim Order. That data collection and reporting is not necessary, but if it is, that the Staff's recommendations, excluding number 4-7, be used and only reported on a monthly basis and not a semimonthly basis. That no uniform plan should be adopted and the Commission should enter such other findings in conformance with this Reply.

Dated this 10th day of April, 2020.

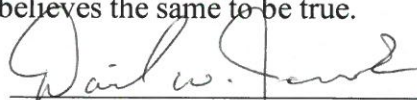
MT. CARMEL PUBLIC UTILITY CO.

  
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David W. James, II, President/COO



### VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters herein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
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David W. James, II, President/COO

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